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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,781	12/28/2001	Gerald B. Cotten	KFHI-101	7182

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HOLLANDER LAW FIRM, P.L.C.
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EXAMINER

BECKER, DREW E

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/032,781

Applicant(s)

COTTEN ET AL.

Examiner

Drew E Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 27-36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on September 30, 2004 for an RCE based on parent Application No. 10/032,781 is acceptable and an RCE has been established. An action on the RCE follows.

Election/Restrictions

2. Claims 27-36 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 9-12, 14-26, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alikonis [Candy Technology] in view of EP 753715A2.

Alikonis teaches a continuous method of making chewy candy by boiling an aqueous sugar composition, admixing a protein-containing dairy component, heating and cooking the mixture, inherently increasing the solids content by boiling off moisture, cooling the mixture, the use of 3-30% dairy, the dairy component including butterfat and evaporated

milk, pulling, the aqueous sugar comprising sucrose and corn syrup, a separate precooker and cooker, and adding the dairy component after the precooker but before the cooker (pages 57 & 149), the use of butter (page 152), the use of gelatin (page 41), heating at 235°F (page 152), cooking at 237°F (page 152), and the heating inherently occurring at ambient, or atmospheric, pressure. Alikonis does not teach the use of plate and frame heat exchangers for the heating steps. EP 753715A2 teaches a method of heating confections by use of a plate and frame heat exchanger (page 3, lines 1-8; Figure 1). It would have been obvious to one of ordinary skill in the art to incorporate the plate heat exchangers of EP 753715A2 into the method of Alikonis since both are directed to methods of making candies, since Alikonis already included a continuous process for heating and cooking (column 1, lines 28-50), and since the plate heat exchanger of EP 753715A2 possessed advantages such as changing the length of the flow path easily, variable heat transfer for sensitive products, and simple cleaning and inspection (pages 1-2). It would have been obvious to one of ordinary skill in the art to use milk at 30-60°F in the method of Alikonis since Alikonis already included the use of butter (page 152) and since butter was commonly stored at refrigerated temperatures such as these.

5. Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alikonis, in view of EP 753715A2, as applied above, in view of Kolar [Pat. No. 3,677,771].

Alikonis and EP 753715A2 teach the above mentioned concepts. Alikonis and Jackson do not teach vacuum flashing and a protein content of 0.4-5%. Kolar teaches a method

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of making caramels by vacuum flashing (column 8, line 1) and a protein content of 3-37% (column 3, line 34). It would have been obvious to one of ordinary skill in the art to incorporate the vacuum flashing and protein content of Kolar into the method of Alikonis since both are directed to methods of making candies, since Alikonis already included flashing, powdered milk, and simply did not mention the protein amount, since the vacuum flashing of Kolar would have provided quicker drying, and since caramels commonly possessed 3-37% protein as shown by Kolar.

Response to Arguments

6. Applicant's arguments with respect to claims 1-26 and 37 have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker
Primary Examiner
Art Unit 1761


DREW BECKER
PRIMARY EXAMINER
11-1004